

1
2
3
4
5
6
7
8
9
10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 KEENAN G. WILKINS,) No. C 10-2818 LHK (PR)
12 Plaintiff,) ORDER OF DISMISSAL
13 v.)
14 GARY PICETTI, Judge, Superior Court)
15 Alameda County, et al.,)
16 Defendants.)

17 Plaintiff, a pretrial detainee currently housed at the Glenn Dyer Detention Facility in
18 Oakland, California, proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C.
19 § 1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the
20 reasons stated below, the Court dismisses the complaint without prejudice.

21 **DISCUSSION**

22 A. Standard of Review

23 A federal court must conduct a preliminary screening in any case in which a prisoner
24 seeks redress from a governmental entity or officer or employee of a governmental entity. *See*
25 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss
26 any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or
27 seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C.
28 § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v.*

1 *Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

2 To state a claim under 42 U.S.C. § 1983, Plaintiff must allege two essential elements: (1)
3 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
4 alleged violation was committed by a person acting under the color of state law. *See West v.*
5 *Atkins*, 487 U.S. 42, 48 (1988).

6 B. Legal Claims

7 Plaintiff's complaint is difficult to understand. He names as defendants several superior
8 court judges, assistant public defenders, police officers, and mental health professionals.
9 Notwithstanding that in a federal civil rights complaint, several of these named defendants would
10 be dismissed based on principles of immunity, it appears that Plaintiff is challenging the judicial
11 process in which he was involuntarily committed to a state mental hospital. In his complaint, he
12 claims, among other things, that the court held a competency hearing in his absence, allowed
13 counsel to waive Plaintiff's presence, and prohibited Plaintiff from testifying or presenting
14 evidence of competency. Plaintiff goes on to allege that he remained in a mental facility for a
15 longer period of time than ordered by the court.

16 "Suits challenging the validity of the prisoner's continued incarceration lie within 'the
17 heart of habeas corpus,' whereas 'a § 1983 action is a proper remedy for a state prisoner who is
18 making a constitutional challenge to the conditions of his prison life, but not to the fact or length
19 of his custody.'" *Ramirez v. Galaza*, 334 F.3d 850, 856 (9th Cir. 2003) (*quoting Preiser v.*
20 *Rodriguez*, 411 U.S. 475, 498-99, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973)). Here, Plaintiff's
21 claims are more appropriately filed in a petition for writ of habeas corpus.¹

22 This Court may entertain a petition for a writ of habeas corpus under 28 U.S.C.
23 § 2241(c)(3) by a person who is in custody but not yet convicted or sentenced. *See McNeely v.*
24 *Blanas*, 336 F.3d 822, 824 n. 1 (9th Cir. 2003). Although there is no exhaustion requirement for
25 a petition brought under 28 U.S.C. § 2241(c)(3), principles of federalism and comity require that
26

27 ¹ To the extent any of Plaintiff's claims can be construed to be civil rights claims,
28 because Plaintiff concedes that he has not attempted to exhaust his administrative remedies, the
Court dismisses them for failure to exhaust. *Woodford v. Ngo*, 548 U.S. 81, 84 (2006).

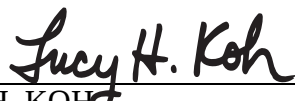
1 this Court abstain until all state criminal proceedings are completed, and the Plaintiff exhausts
2 available judicial state remedies, unless special circumstances warranting federal intervention
3 prior to a state criminal trial can be found. *See Carden v. Montana*, 626 F.2d 82, 83-84 & n.1
4 (9th Cir. 1980); *see also Younger v. Harris*, 401 U.S. 37, 43-54 (1971) (under principles of
5 comity and federalism, a federal court should not interfere with ongoing state criminal
6 proceedings by granting injunctive or declaratory relief absent extraordinary circumstances).
7 The special circumstances that might warrant federal habeas intervention before trial include
8 proven harassment, bad faith prosecutions and other extraordinary circumstances where
9 irreparable injury can be shown. *Carden*, 626 F.2d at 84 (violation of speedy trial right not alone
10 an extraordinary circumstance). Because Plaintiff has not shown special circumstances that
11 warrant federal intervention before the trial is held and any appeal is completed, this Court will
12 not construe his civil rights complaint as a habeas petition, but will abstain and dismiss this
13 action without prejudice. *See id.* at 84. The allegations that Plaintiff raises in his complaint are
14 matters that can and should be addressed in the first instance by the trial court, and then by the
15 state appellate courts, before he seeks a federal writ of habeas corpus.

16 CONCLUSION

17 Plaintiff's complaint is DISMISSED without prejudice to Plaintiff filing a habeas
18 petition, but he should not file a new federal petition for writ of habeas corpus unless he gets
19 convicted or committed and then not until his direct appeal and state habeas proceedings have
20 concluded and he has given the state's highest court a fair opportunity to rule on each of his
21 claims.

22 IT IS SO ORDERED.

23 DATED: 10/28/10

24 
LUCY H. KOH
United States District Judge